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Licensing requirements and other matters associated with conducting loan modification and foreclosure consultant activities, Regulation R-052-09, NRS 645F

The permanent regulation requiring licensing for persons conducting loan modification and foreclosure consultant services became effective on August 25, 2009. The full text of the [regulation](#) is posted on our Web site. The emergency regulation signed into law by the Governor on July 8, 2009 was repealed immediately upon the permanent regulation becoming effective.

The permanent regulation has a different licensing scheme than the emergency regulation; however the basic submission requirements and fees are the same, as well as the requirement for persons conducting loan modification, foreclosure consultant or covered services pursuant to NRS 645F to be licensed or exempt from licensing. The permanent regulation has many more requirements to hold a license than did the emergency regulation, such as a required bond and pre-licensing and continuing education,

The Division will no longer accept an application unless the bond is included, and current applicants will be sent a letter requesting that a bond be submitted with 30 days of the date of the letter to avoid withdrawal of their application. The permanent regulation also contains many consumer protections and contract and trust account requirements. Additionally, the permanent regulation clarifies that although an attorney is exempt from licensing, persons associated with or employed by an attorney, who are not licensed as an attorney, are required to be licensed. The current application forms are available on our Web site.

The following is a synopsis of the regulation. We encourage you to read the full text of the regulation.

1. The regulation establishes three tiers of license types for persons (individuals & companies) conducting loan modifications, foreclosure or covered service activities. All company applications received under the emergency regulations will be deemed independent cover service providers, and all agent applications received under the emergency regulations will be deemed associated cover service providers. The types are:

A. A **Covered Service Provider** license is the top tier and allows a holder to conduct all activity prescribed in NRS 645F and AB 152.

B. A **Foreclosure Consultant** license is the middle tier and holders may only conduct activity prescribed in NRS 645F.320. NRS 645F.320 does not include advising a homeowner of options related to filing for bankruptcy or providing any financial, debt or budget counseling except as it

relates to the filing of a notice of default. These activities may only be done by a Covered Service Provider. A Foreclosure Consultant may also not offer a homeowner all loan modification options, such as interest rate changes; these activities may only be done by a Loan Modification Consultant or a Covered Service Provider.

C. A **Loan Modification Consultant** license is the lowest tier and allows a holder to only conduct activity allowed in Sec. 2 of AB 152. A Loan Modification Consultant may not give advice related to the avoidance or postponement of a foreclosure sale, provide any financial counseling or advice, even as it relates to foreclosures, discuss options related to obtaining a new loan or filing of a bankruptcy, assist a homeowner to exercise the right of reinstatement, obtain any waiver of an acceleration clause contained in a note or assist a homeowner in obtaining a foreclosure reconveyance.

2. Within each type, licensees may hold a license as either:

- A. An **independent licensee**, much like a company (sole proprietorship/company or a licensee that employs associated licensees)
- B. An **associated licensee**, much like an agent

3. Although the fees for an independent license versus an associated license are different, the fees, forms and requirements for all independent licenses are the same, as are the fees and forms for all types of associated licenses. There are, however, different pre-licensing and continuing education requirements for each license type which are covered in more detail in Sec. 43 & 44 of the regulation. If a complete application is received prior to December 31, 2009, an applicant will have 90 days from the date the complete application is submitted to the Division to complete the education requirement. The education requirements for initial licensing of all natural persons are as follows:

- If you are applying for a covered service provider license, 25 hours of instruction (live or on-line). *Continuing Education at renewal is 10 hours.*
- If you are applying for a foreclosure consultant license, 20 hours of instruction (live or on-line). *Continuing Education at renewal is 7 hours.*
- If you are applying for a loan modification consultant license, 15 hours of instruction (live or on-line). *Continuing Education at renewal is 5 hours.*

The 25, 20 and 15 hours of pre-licensing instruction, respectively, must include, at least:

- 3 hours of professional ethics, which must include instruction on fraud, consumer protection and fair lending issues;
- 6 hours of federal laws and regulations relating to mortgage lending, which must include not less than 2 hours regarding the Real Estate Settlement Procedures Act ("RESPA"), 2 hours regarding the Truth-in-Lending Act ("TILA"), and 2 hours regarding other federal laws and regulations, including information related to the tax consequences of loan modification or foreclosure and federal programs designed to assist homeowners facing foreclosure; and
- 4 hours of Nevada laws and regulations relating to mortgages, at least 2 hours of which must be related to Chapter 645F of NRS and Chapter 645F of NAC.

Information related to course offerings may be found under the Education link on the Division's Web site. You may also contact the Division's Education Coordinator Paula Scotland at pscotland@mld.nv.gov or (775) 684-7050.

4. The application and renewal cost are:

A. Independent licensee (all types):

1. \$750 initial application principal office, \$100 branch office
2. \$500 initial year's license, \$150 branch
3. \$500 principal office renewal, \$100 branch renewal (Licenses expire annually 7-1)
4. \$100 reinstatement fee per office
5. \$250 change of control fee
6. \$25 duplicate license fee
7. \$60 per hour fee for Division examinations

B. Associated Licensee (all types):

1. \$185 initial application fee (Licenses expire annually 7-1)
2. \$170 renewal fee
3. \$25 change of independent licensee fee
4. \$25 duplicate license fee

5. Additional requirements for Independent Licensees:

- Hold a \$75,000 minimum bond naming the Independent licensee as a principal as well as cover all associated licensees, either individually by name or as a group. If the average trust account balance is > \$50,000, the bond must be \$100,000
- Submit annual CPA prepared financial statements 120 days after their fiscal year end as well as biannual self prepared statements of their trust accounts. If the average trust account balance is > \$75,000, the statement must be audited
- Must maintain adequate books and records
- Must supervise associated licensees
- May collect money in advance from the homeowner; however the money must be placed in a trust bank account in a federally insured institution which is located in this state. The branch where the account is opened may be located out of state so long as the institution has offices within Nevada. Only independent licensees may have trust accounts
- May only remove money from trust account after fully performing a phase of service. The contract must detail all phases and costs associated with each phase. The costs must be reasonable to the service provided for each phase.
- Each independent licensee must be examined within three months of commencing business, then at least annually thereafter.

6. Additional informational facts:

- All applications received under the emergency regulation will be deemed Cover Service Providers
- Associated licensees must work for or be associated with an independent licensee, but may only work for one at a time. If they leave or move associations there are required forms.
- Licensees may also hold licenses under NRS 645B (mortgage broker/agent) and NRS 645 (real estate)
- Associated licensees may not associate with an independent licensee that holds a lower tier license than the associated licensee
- Licensees are not required to have a Nevada office and may operate out of state

- The permanent regulation allows applicants who submit a completed application package prior to 12-31-09 to continue to work during the background investigation. Once a complete application, including the bond for independent licensees, is received the licensee will receive a letter authorizing him to conduct business pursuant to the type of license that was applied for. However, the permissibility will be invalidated if the Division finds that the applicant does not meet the standards prescribed in law. The Division will notify the applicant in writing through a denial order if the applicant is deemed to not meet prescribed standards. The applicant will have a right to a hearing on the matter.
- Regulation has many consumer protection requirements including specific advertisement criteria.
- Regulation has many specific contract and disclosures requirements including consumer rights to rescind or cancel a contract.
- The Division may assess up to \$10,000 in fines for each violation of law against independent licensees, associated licensees and person conducting business without a license. The Division may also order restitution to any person who has suffered an economic loss as a result of a violation.
- A licensee has a fiduciary obligation to the homeowner to act in good faith and deal fairly with the homeowner, including:
 - (a) Act in the client's best interest;
 - (b) Conduct only those services which are suitable for the client's needs;
 - (c) Disclose any financial, business, professional or personal interest the person has in conducting a transaction for the client;
 - (d) Disclose any material fact that the person knows or should know may affect the client's rights or interests or the ability to obtain the intended benefit from a transaction;
 - (e) Provide an accounting to the client that lists all money received from the client; and
 - (f) Exercise reasonable care in performing any other duty relating to the provision of services as a covered service provider, foreclosure consultant or loan modification consultant, as applicable.